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EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
3683	

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Applicati n No.	Applicant(s)
	09/836,545	OKAJIMA, SHINPEI
	Examiner	Art Unit
	Melody M. Burch	3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 April 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-53 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 49 is/are allowed.

6) Claim(s) 1-32,36-48 and 50-53 is/are rejected.

7) Claim(s) 33-35 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 17 April 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15
4) Interview Summary (PTO-413) Paper No(s). ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/17/03 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 15, and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 1. The phrase "said center longitudinal axis" lacks proper antecedent basis in the claim.

Claims 15 and 52 are indefinite due to their dependency from claim 1.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6123354 to Laughlin et al. Laughlin et al. show in figures 3, 6A, and 6B a snowboard binding comprising: a base member 9,29 having a base plate with a front portion 29, a rear portion shown extending from element number 9 to element number rear 29 and a longitudinal axis extending between the front and rear portions; and a rear binding member left-side 7 coupled to a first lateral side of the rear portion of the base plate to extend inwardly toward the center longitudinal axis shown in the central portion of element 57 shown in figure 6B, as best understood, into a snowboard receiving area above the base plate, the rear binding member including a first latch member left-side 17 as shown in figure 6a movable relative to the base member, the first latch member being pivotally supported about a first pivot axis 55 substantially parallel to the longitudinal axis, the first latch member being arranged to move downwardly toward the base member and laterally outwardly away from the center longitudinal axis upon application of a force on the first latch member in a direction substantially towards the base member by the snowboard boot as shown, and to move upwardly away from the base member and laterally inwardly (toward the center longitudinal axis) upon removal of the force as shown.

6. Claims 1 and 15 are rejected under 35 U.S.C. 102(e) as being unpatentable over US Patent 6293578 to Anderson et al.

Re: claim 1. Anderson et al. show in figures 1-3 a snowboard binding comprising: a base member having a base plate with a front portion shown in the area of element 49, a rear portion shown extending from element number 104 to element number 48 and a longitudinal axis extending between the front and rear portions; and a rear binding member 64 coupled to a first lateral side of the rear portion of the base plate to extend inwardly toward the center longitudinal axis shown in figure 4, as best understood, into a snowboard receiving area above the base plate, the rear binding member including a first latch member 76 as shown in figures 4-7 movable relative to the base member, the first latch member being pivotally supported about a first pivot axis 86 substantially parallel to the longitudinal axis, the first latch member being arranged to move downwardly toward the base member and laterally outwardly away from the center longitudinal axis upon application of a force on the first latch member in a direction substantially towards the base member by the snowboard boot as shown in figures 4 and 5, and to move upwardly away from the base member and laterally inwardly (toward the center longitudinal axis) upon removal of the force as shown in figure 7.

Re: claim 15. As shown in figure 2 the rear binding member shown in the area of element number 64 is longitudinally adjustable relative to the rear portion of the base member such that the rear binding member can be selectively coupled at different

longitudinal positions relative to the base member by virtue of the slots 100 within which mounting screws 104 may be adjusted.

7. Claims 41-45 and 51 are rejected under 35 U.S.C. 102(b) as being unpatentable over US Patent 5690351 to Karol. Karol shows in figure 10 a snowboard boot comprising: an upper portion 24, and a sole portion shown in the area of 36c coupled to the upper portion, the sole portion having a first rear catch portion located at a first lateral side of the sole portion shown in the area of 52c and a second rear catch portion located at a second lateral side of the sole portion positioned on the other side of the sole portion, the first rear catch portion including at least one longitudinally extending first notch and the second rear catch portion including at least one longitudinally extending second notch shown in the area of element 34c, the first notch being open in a rearward direction such that the first notch is viewable in a longitudinal direction from behind the first rear catch portion and such that a first latch of a snowboard binding can slide longitudinally rearwardly within the first notch out of engagement with the first notch when the snowboard boot is coupled to the snowboard binding and moved longitudinally forward relative thereto, and the second notch being open in a rearward direction such that the second notch is viewable in a longitudinal direction from behind the second rear catch portion and such that a second latch of the snowboard binding can slide longitudinally rearwardly within the second notch out of engagement with the second notch when the snowboard boot is coupled to the snowboard binding and moved longitudinally forward relative thereto as shown.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 4-10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6293578 to Anderson et al. in view of Laughlin et al. '345.

Re: claims 2, 4, 5, 16. Anderson et al. show in the figures a snowboard binding comprising a base member having a base plate with a front portion shown in the area of element 49, a rear portion shown extending from element number 104 to element number 48 and a longitudinal axis extending between the front and rear portions, a rear binding member 64 coupled to a first lateral side of the rear portion of the base member, the rear binding member including a first latch member 76 as shown in figures 4-7 movable relative to the base member, the first latch member being pivotally supported about a first pivot axis 86 substantially parallel to the longitudinal axis, the first latch member being configured to engage a first rear catch portion 28 of a snowboard boot 12, Anderson et al. also show the limitation of a second rear binding member shown in the area of element number 42 coupled to a second lateral side of the rear portion of the base member, the second rear binding member including a second latch member 52, the second latch member being configured to engage a second rear catch portion of the snowboard boot as shown in figure 5, but does not show the limitation of the second latch member being configured similar to the first latch member such that it is pivotally

supported about a second pivot axis substantially parallel to the longitudinal axis which would result in the first and second latch members being arranged to move downwardly toward the base member and laterally outwardly away from each other and away from the longitudinal axis upon application of a force on the first and second latch members in the direction substantially towards the base member.

Laughlin et al. '345 teach in figure 3 a snowboard binding including both first and second latch members being configured similarly resulting in both members being pivotable. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the second latch member of Anderson et al. to have included a configuration similar to that of the first latch member, as taught by Laughlin et al., in order to provide a means of enabling quick manual lever release of both sides of a snowboard boot as taught by Laughlin et al. '345 in order to provide an alternate means of releasing a boot from a snowboard base member.

Re: claims 6, 7, 8. Anderson et al., as modified, teach the use of the first and second latch members being normally urged to the first and second initial positions by first and second biasing members 88, respectively. See figure 3 of Anderson et al.

Re: claim 9. Anderson et al., as modified teach the use of the base member including a mounting portion shown in the area of element number 46,49 and a pair of attachment portions shown in the area of element numbers 54,66 in figure 2 of Anderson et al. extending perpendicularly from the mounting portion, the side attachment portion having the first and second latch members coupled thereto, respectively.

Re: claims 10 and 17. Anderson et al. lack the limitation of the base member including a highback support. Laughlin et al. '345 teaches in figure 3 the use of a highback support 13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the binding of Anderson et al. to have included a highback support extending upwardly relative to the rear portion of the base member, as taught by Laughlin et al. '345, in order to provide a means of supporting the lower leg portion of the user to improve comfort.

10. Claims 3, 18-32, 36-40, 50, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6293578 to Anderson et al. in view of Laughlin et al. '345 as applied to claim 2 above (in the case of claim 3), and further in view of US Patent 4177584 to Beyl.

Re: claims 3, 18, 52. Anderson et al., as modified, lack the limitation of the binding including a front binding member and a snowboard boot having a front catch portion. Beyl teaches in the figure on the front of the patent the use of a front binding member 9 movably coupled to the front portion of a base member 8 between a release position and a latched position shown and the use of a front catch portion 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the binding and boot of Anderson et al., as modified, to have included a front binding and front catch portion, respectively, as taught by Beyl, in order to provide a means of effectively restraining the front portion of the snowboot.

Re: claims 19, 20, 21, 22, 26, 27, 30, 31, 32, 50. Anderson et al., as modified, teach the use of the first and second latch members being normally urged to the first and second initial positions by first and second biasing members 88, respectively. See figure 3 of Anderson et al.

Re: claims 23-25. Anderson et al., as modified, lack the showing of the elongated locking surfaces that diverge relative to the longitudinal axis of the base member. In *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) the court held that the configuration of a claimed object was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration produced an unexpected result. Since Applicant has not disclosed that having the diverted surfaces and/or pivot axes solves any stated problem or is for any particular purpose and since it appears that the surfaces would perform equally well with other configurations depending on the configuration of the lateral catches in the boot, Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the surfaces/pivot axes to have been diverted in order to provide an alternate means of engaging corresponding lateral boot catches.

Re: claims 28 and 39. Anderson et al., as modified teach the use of the base member including a mounting portion shown in the area of element number 46,49 and a pair of attachment portions shown in the area of element numbers 54,66 in figure 2 of Anderson et al. extending perpendicularly from the mounting portion, the side

attachment portion having the first and second latch members coupled thereto, respectively.

Re: claims 29 and 40. Anderson et al. lack the limitation of the base member including a highback support. Laughlin et al. '345 teaches in figure 3 the use of a highback support 13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the binding of Anderson et al. to have included a highback support extending upwardly relative to the rear portion of the base member, as taught by Laughlin et al. '345, in order to provide a means of supporting the lower leg portion of the user to improve comfort.

Re: claims 36, 37, 38. Anderson et al., as modified, teach the claimed invention. As shown in figure 2 of Anderson et al. the rear binding member shown in the area of element number 64 is longitudinally adjustable relative to the rear portion of the base member such that the rear binding member can be selectively coupled at different longitudinal positions relative to the base member by virtue of the slots 100 within which mounting screws 104 may be adjusted.

11. Claims 11-14 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin et al. '345 in view of US Patent 5544909 to Laughlin et al.

Re: claim 11. Laughlin et al. '345 show in figure 3 a snowboard binding comprising: a base member 9,29 having a front portion shown in the area of element 9, a rear portion shown in the area extending from element 9 to rear element number 29, a longitudinal axis between the front and rear portions, and a first rear binding member 7 shown in figures 6A and 6B coupled to a first lateral side of the base member, the first

rear binding member including a first latch member 17 movable relative to the base member, the first latch member being pivotally supported about a first pivot axis 59 substantially parallel to the longitudinal axis, the first latch member being arranged to move laterally with respect to the longitudinal axis upon application of a force in a direction substantially towards (down towards) the base member, but does not include the limitation of the front binding member and the front catch.

Laughlin et al. '909 teach in figures 1-3 a snowboard binding including a front binding member 26 movably coupled to the front portion of a base member 10 between a release position and a latched position, the front binding member including a connecting portion shown in the area of the lead line of element number 26 and a binding flange shown in the area between the lead lines of element numbers 26 and 32 as shown in figure 3 that is arranged to move in a forward and downward direction relative to the base member when moving from the latched position to the release position relative to a longitudinal axis, the connecting portion extending from a forward end of the binding flange in the latched position as shown such that the connecting portion is configured to limit forward movement of a front catch shown in the area of element 66 of a snowboard boot 16 along the longitudinal axis in the latched position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the binding and boot of Laughlin et al. '345 to have included a front binding and front catch portion, respectively, as taught by Laughlin et al. '909, in order to provide a means of effectively restraining the front portion of the snowboot.

Re: claim 12. Since front and rear are relative terms, Examiner has broadly interpreted the portion in the area of element 28 to be the forward portion of the binding and the element 28 of Laughlin et al. 909 to be a front binding member having a connecting portion shown below the lead line of element number 68 and a binding flange shown in the area of the lead line of element number 48. In light of the interpretation, Laughlin et al. '909 teaches the front binding member including a front pawl shown in the area of element number 28 urged in a rear direction to the latched position by a front biasing member 60 that applies an urging force on the front pawl via intervening elements, and a release lever 44 shown in figure 3 coupled to the front pawl via intervening elements to move the front pawl from the latched position to the release position upon application of a force on the release lever that is greater than the urging force of the front biasing member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the front binding member of Laughlin et al. '345 to have included a biasing member and a release lever, in view of the teachings of Laughlin et al. 909, to provide a quick release means of disengaging the front of the boot from the binding system.

Re: claims 13 and 14. Laughlin et al. '345 lack the showing of the front and rear binding members being longitudinally adjustable. Laughlin et al. '909 teach in figure 3 the use of the front and rear binding members 26,28 being longitudinally adjustable to be selectively coupled to the base member at different longitudinal positions via apertures 34. It would have been obvious to one of ordinary skill in the art at the time

the invention was made to have modified the front and rear binding members of the binding of Laughlin et al. '345, as modified, to have been longitudinally adjustable relative to the base, as taught by Laughlin et al. '909, to provide a means of accommodating different boot sizes.

Re: claim 53. Laughlin et al. '345 shows in figures 6A and 6B the first latch member being arranged to move downwardly toward the base member and, as broadly claimed, laterally outwardly with respect to the center axis shown in the area of the lead line of number 57 upon application of the force on the first latch member in the direction substantially towards the base member.

12. Claims 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5690351 to Karol. Karol is silent as to the construction of the rear catch portions with respect to the sole portion. In *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965) the court held that the use of a one piece construction instead of several parts rigidly secured together would be merely a matter of obvious engineering choice. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the rear catch portions such that they were integrally formed with the sole portion in order to provide an alternate means of connecting pieces of the boot.

13. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5690351 to Karol in view of US Patent 5915720 to Turner et al.

Turner teaches in figure 23 the use of a front catch portion being a U-shape member with a bight portion 658 and a pair of leg portions 672 coupled to the sole

portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the binding of Karol to have included a front catch portion, as taught by Turner et al., in order to provide a means of securing the front of the boot to the front portion of the binding.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/074253 in view of Anderson et al.. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims include the limitations of a base member having a front portion, a rear portion and a center longitudinal axis extending between the front and rear portions, a rear binding arrangement having a first latch member pivotally supported about a first pivot axis to move laterally in an outward direction relative to the center longitudinal axis upon application of a force on the first latch member in a direction towards the base, but the

instant application does not include the limitations of the first and second lateral side attachment portions and the first latch member having a first tooth and a first latching surface that is convexly shaped, etc.

Anderson et al. teach in figure 2 the use of first and second lateral side attachment portions 54,68 extending upwardly from the rear portion of the base member, the first and second lateral side attachment portions being laterally spaced apart relative to the center longitudinal axis and teach the use of the first latch member 76 having a first tooth and a first latching surface convexly shaped as shown in figure 4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the binding of the instant application to have included features, as taught by Anderson et al., in order to provide a means of retaining the lateral catches of a boot to efficiently connect the snow boot to the binding.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Terminal Disclaimer

16. The terminal disclaimer filed on 3/20/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent 6,536,795 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Allowable Subject Matter

17. Claims 33-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
18. Claim 49 is allowed.

Response to Arguments

19. Arguments filed 4/17/03 with regards to claim 1 have been considered but are not persuasive. Examiner notes that the argument regarding the "center longitudinal axis of the base member" is more specific than the claim language. The claim language does not state that the center longitudinal axis is of the base member.

With regards to the remaining independent claims, the arguments are moot in view of the new grounds of rejection.

Conclusion

20. In order to complete the record, it should be noted that no conflict appears to presently exist between the subject matter defined by the instant claims and the subject matter of the claims of applicant's and/or assignee's copending application no. 09/921305, 09/921307, 09997241, 09/997259, 09/997262, 09/997275, and 09/997274 have been made of record. Accordingly, no double patenting rejection is entered into the instant application. See MPEP 804+ concerning double patenting type of rejections, if necessary. Applicant and/or assignee should maintain this clear line of patentable distinction between the instant claims and the claims of the indicated patent application.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Art Unit: 3683

mmB 5/2/03

mmB

May 2, 2003


JACK LAVINDER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
